

Warren Havens  
2509 Stuart Street  
Berkeley CA 94705

August 24, 2014

Re: Filing in FCC docket 11-71

I am hereby submitting the attached, a recent filing by the Plaintiffs (most of the "SkyTel" companies that are designated as parties in the HDO FCC 11-64) in the *Havens v. Mobex, Maritime et al.* antitrust case in the NJ USDC (the "Maritime Antitrust Case").

This attached court filing involves the recent admissions of Maritime in this FCC docket 11-71 of the permanent abandonment of the vast majority of its site-based licensed stations (all of those in its 2012 and 2013 "stipulations").

The recent admissions are contrary to extensive testimony of Maritime (mostly by John Reardon) in the Maritime Antitrust Case, as detailed in the filing.

The attached is submitted for the reasons the SkyTel companies and I previously informed Judge Sipple and the parties in this proceeding, of the nature of and developments in the Maritime Antitrust Case which is substantially parallel to issues under the HDO, including as to:

- Issue (g): involving site based licenses auto-termination by action of law (not stipulation), including when stations are permanently abandoned, and
- Issue (h): involving licensee character and fitness, including (i) candor and truthful representations in FCC-license and -rule related proceedings, including as to when stations were permanently abandoned, and (ii) violation of Antitrust law subject to Communications Act 47 USC §313.

Respectfully,



Warren Havens



William F. Maderer  
973.645.4814  
wmaderer@saiber.com

August 22, 2014

**VIA CM/ECF & FIRST CLASS MAIL**

Honorable Katharine S. Hayden, U.S.D.J.  
United States District Court  
50 Walnut Street  
Newark, New Jersey 07101-0999

**Re: Warren Havens et al. v. Mobex Network Services LLC, et al.  
Civil Action No. 11-00993-KSH-CLW**

Dear Judge Hayden:

We are very mindful of the fact that post-trial submissions are concluded. We write to provide certain new and material information furnished by Defendant MCLM only after those submissions had been made.

MCLM has made a filing verified on August 4, 2014 in the FCC proceedings on Issue G before Chief Administrative Law Judge Sippel. The filing follows Judge Sippel's Order FCC 14M-18 of June 17, 2014 (*In the Matter of Maritime Communications/Land Mobile, LLC*, 2014 WL 2767313 (F.C.C. June 17, 2014) (the "Order", referenced in Plaintiffs' Findings of Fact filed July 16, 2014 ("FOF") at ¶¶136-38)) and consists of MCLM's Response to Interrogatories (the "Response"). The interrogatories in question are dated July 21, 2014 and were propounded by the FCC's Enforcement Bureau pursuant to the Order (the "Interrogatories").

The Response contains the admission, and hence constitutes direct evidence, that MCLM permanently abandoned the vast majority of the site-based licenses and component sites

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(stations) at issue in the proceedings before Your Honor well before the trial of this action.

These licenses and sites fall into three categories:

*The Exhibit A Category:* First, with respect to the site-based licenses and stations listed in Exhibit A to the Interrogatories (referenced by incorporation in the Response, *see* answer to Interrogatory 1, p. 3 1<sup>st</sup> par.) and listed in the Stipulation between MCLM and the FCC's Enforcement Bureau entered in 2012 (Ex. P229; Plaintiffs' FOF ¶130), MCLM now admits in the Response that it permanently abandoned these licenses and stations "[s]hortly before May 31, 2012".

*The Exhibit B Category:* Second, with respect to the other site-based licenses and stations which were listed on Exhibit B to the Interrogatories (and likewise referenced by incorporation in the Response, *see* answer to Interrogatory 8, p. 6, 2<sup>nd</sup> par.) and listed in the Stipulation between MCLM and the Enforcement Bureau entered in 2013 (Ex. P464; Plaintiffs' FOF ¶130), MCLM now admits in the Response that it permanently abandoned these licenses and stations "[s]hortly before December 2, 2013". The two Stipulations' component licenses (Call Signs) and component station locations thereunder are also described in ¶¶70-71 of the Order. *See In the Matter of Maritime Communications/Land Mobile, LLC*, 2014 WL 2767313, at \*19; *see also* Plaintiffs' FOF at ¶¶136-137.

*The Exhibit C Category:* Third and finally, the 16 remaining MCLM incumbent site-based station licenses not covered by Exhibit A or B are listed in Exhibit C to the Interrogatories as noted in the Response, *see* answer to Interrogatory 8, p. 7, and Plaintiffs have also contested their validity. *See, e.g.*, Plaintiffs' FOF at ¶130. The total number and identities of the Call Signs and component station locations are listed both in the Stipulations and in the Interrogatories.

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The Response was verified under oath by Sandra DePriest as President of MCLM. Mrs. DePriest states in her verification that she relied for “operation of the incumbent stations” on information supplied by John Reardon and Robert Smith. *See* Response, p. 11. A copy of both the Interrogatories and the Response is enclosed.

In the trial before Your Honor, Mr. Reardon testified on the subject of contour information multiple times -- including in responses to Your Honor’s questions addressed to him (*see, e.g.*, T9 66:2-67:21, 69:6-71:10; Plaintiffs’ FOF ¶¶59, 61, 145; Plaintiffs’ Supp. FOF ¶56) - without ever mentioning the permanent abandonment of these licenses and stations. The refusal of MCLM and PSI to provide contour information to Plaintiffs was a significant component of the alleged unlawful conspiracy, and both Plaintiffs and MCLM addressed the subject of contour information extensively in their respective Proposed Findings of Fact. *See, e.g.*, Plaintiffs’ FOF ¶22 (citing 47 C.F.R. §1.955(a)(3) re: permanent discontinuance), ¶23, ¶¶58-61, ¶¶145-150; Plaintiffs’ Supp. FOF ¶5, ¶¶47-58; MCLM’s FOF ¶¶72-73; and MCLM’s Supp. FOF ¶¶16, 18.

In response to Plaintiffs’ repeated requests for contour information both before and during the trial of this action, the only truthful and proper response by MCLM as to this vast majority of site-based licenses and the stations thereunder would have been that those licenses and stations had been permanently abandoned and therefore no contour information could be furnished, or need be furnished since operations by Plaintiffs could not possibly have interfered with MCLM’s permanently abandoned stations. However, this was decidedly not the response that MCLM gave either before trial or at trial. *See, e.g.*, John Reardon (T7 143:7-13, 157:13-

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159:9, 167:1-169:10; T9 66:2-67:21, 69:6-71:10) and Sandra DePriest (T6 92:24-93:16, 97:24-98:7, 105:19-106:18); Plaintiffs' FOF ¶¶59-60, ¶75, ¶145; Plaintiffs' Supp. FOF ¶¶55-56.

MCLM's response at trial was to repeat its longstanding position that MCLM would provide no contour information until and unless Plaintiffs described to MCLM in detail Plaintiffs' construction plans for build-out of Plaintiffs' geographic licenses. This position makes no sense at all in light of the fact that MCLM's licenses and stations were permanently abandoned. When asked for more detailed information about this position during the trial, MCLM emphatically did not say that the licenses and stations in question had been permanently abandoned and thus were not in operation or ever going to be in operation. Instead, MCLM continued to respond as though it was simply in the process of voluntary relinquishment under the two Stipulations noted above and at the trial, in attempted settlement with the FCC's Enforcement Bureau. *See, e.g.*, John Reardon T7, 125:25-126:12; T9 47:2-48:1.

If MCLM seeks to argue that "permanent abandonment" is not the same as "permanent discontinuance", its choice of terminology could only be called artful, and in any event, the fact of its use of one word as opposed to the other does not change the "permanent" reference nor does it relieve MCLM of the duty to be candid before this tribunal and elsewhere about its decision to permanently abandon and the timing of that decision.

Had MCLM told Plaintiffs the simple fact that those licenses and component stations had been permanently abandoned long before the trial of this action, this disclosure would have informed Plaintiffs that there was no contour information and no possible interference as to those licenses and stations. If Plaintiffs had been provided with this accurate information in a timely fashion, Plaintiffs would have been significantly less blocked in their build-out plans.

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Given MCLM's decision "shortly before" May 12, 2012 and December 2, 2013 to permanently abandon these licenses, the only credible reason for MCLM not so advising Plaintiffs was to uphold, and keep hidden, MCLM's contribution to its antitrust conspiracy with PSI. This withholding of information about permanent abandonment was highly misleading and perfectly consistent with MCLM's and PSI's objective of severely blocking and restraining Plaintiffs.

Invoking 47 U.S.C. §313, as Plaintiffs have requested (*see* Plaintiffs' Proposed Conclusions of Law ("COL"), ¶¶103-06 and Plaintiffs' Supp. FOF & COL, ¶46) to address this issue will cut through years of further FCC proceedings and appeals, facilitate action in the bankruptcy court proceedings, and free Plaintiffs to pursue nationwide wireless for smart transportation and other valuable and beneficial purposes, described at the trial and in their post-trial FOF & COL submissions.

Respectfully submitted,

s/ William F. Maderer  
William F. Maderer  
**SAIBER LLC**  
18 Columbia Turnpike, Suite 200  
Florham Park, New Jersey 07932-2266  
(973) 622-3333 (telephone)

s/ Stephen Hudspeth  
Stephen Hudspeth (*admitted pro hac vice*)  
6 Glen Hill Road  
Wilton, Connecticut 06897  
(203) 762-2846  
*Attorneys for Plaintiffs*

Enclosures:

- 1.) FCC Enforcement Bureau's Interrogatories to MCLM, dated July 21, 2014
  - 2.) MCLM's Response to the Interrogatories, dated Aug. 4, 2014
- cc: All Counsel of Record (w/encl. via CM/ECF)

**ENCLOSURE 1**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In re	)	
	)	
<b>MARITIME COMMUNICATIONS/LAND</b>	)	EB Docket No. 11-71
<b>MOBILE, LLC</b>	)	File No. EB-09-IH-1751
	)	FRN: 0013587779
Participant in Auction No. 61 and Licensee of	)	
Various Authorizations in the Wireless Radio	)	
Services	)	
	)	
Applicant for Modification of Various	)	Application File Nos. 0004030479,
Authorizations in the Wireless Radio Services	)	0004144435, 0004193028, 0004193328,
	)	0004354053, 0004309872, 0004310060,
Applicant with <b>ENCANA OIL AND GAS (USA),</b>	)	0004314903, 0004315013, 0004430505,
<b>INC.; DUQUESNE LIGHT COMPANY; DCP</b>	)	0004417199, 0004419431, 0004422320,
<b>MIDSTREAM, LP; JACKSON COUNTY</b>	)	0004422329, 0004507921, 0004153701,
<b>RURAL MEMBERSHIP ELECTRIC</b>	)	0004526264, 0004636537,
<b>COOPERATIVE; PUGET SOUND ENERGY,</b>	)	and 0004604962
<b>INC.; ENBRIDGE ENERGY COMPANY,</b>	)	
<b>INC.; INTERSTATE POWER AND LIGHT</b>	)	
<b>COMPANY; WISCONSIN POWER AND</b>	)	
<b>LIGHT COMPANY; DIXIE ELECTRIC</b>	)	
<b>MEMBERSHIP CORPORATION, INC.;</b>	)	
<b>ATLAS PIPELINE – MID CONTINENT, LLC;</b>	)	
<b>DENTON COUNTY ELECTRIC</b>	)	
<b>COOPERATIVE, INC. DBA COSERV</b>	)	
<b>ELECTRIC; AND SOUTHERN CALIFORNIA</b>	)	
<b>REGIONAL RAIL AUTHORITY</b>	)	

To: Maritime Communications/Land Mobile, LLC

**ENFORCEMENT BUREAU'S INTERROGATORIES TO  
MARITIME COMMUNICATIONS/LAND MOBILE, LLC  
PURSUANT TO *ORDER*, FCC 14M-22**

1. Pursuant to Section 1.323 of the Commission's rules, 47 C.F.R. §§ 1.323, and the Presiding Judge's *Order*, FCC 14M-22,<sup>1</sup> the Enforcement Bureau (Bureau) hereby submits the

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<sup>1</sup> See *Order*, FCC 14M-22 (ALJ, rel. July 15, 2014).



following Interrogatories to submits the following interrogatories to Maritime Communications/Land Mobile, LLC (Maritime).

2. Maritime shall deliver its responses to the offices of the Investigations and Hearings Division, Enforcement Bureau, Suite 4-C330, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554 (or at some other location that is mutually acceptable to the Bureau and Maritime Communications/Land Mobile, LLC) within 14 days of the date of these interrogatories.

3. The obligation of Maritime to answer these interrogatories is continuing in nature. Maritime has an obligation to provide in the future any and all additional responsive information that may come to its attention subsequent to its answering these interrogatories but not initially disclosed at the time, date and place set forth herein or in any supplemental answers that it submits. In this regard, Maritime must supplement its initial and supplemental responses if it learns that, in some material respect, the responses initially provided, or as supplemented, were incomplete or incorrect or if additional responsive information is acquired by or has become known after its initial or supplemental responses.

#### **Definitions**

a. As used herein, the term “you” or “your” or “Maritime” or “Maritime Communications/Land Mobile, LLC ” means Maritime Communications/Land Mobile, LLC, including all other persons acting or purporting to act on its behalf, including all directors, officers, employees, managers, shareholders, general partners, limited partners, parents, subsidiaries, whether wholly or partially owned, affiliates, divisions, predecessors and successors-in-interest or other affiliated company or business, or agents, including consultants, attorneys, and any other persons working for or on behalf of any of the foregoing during the

period January 1, 2002 through the present. For purposes of this definition, “affiliate” shall include, but not be limited to, Donald R. DePriest.

b. As used herein, the term “Choctaw” means Choctaw Telecommunications, LLC and Choctaw Holdings, LLC including all other persons acting or purporting to act on their behalf, including all directors, officers, employees, managers, shareholders, general partners, limited partners, parents, subsidiaries, whether wholly or partially owned, affiliates, divisions, predecessors and successors-in-interest or other affiliated company or business, or agents, including consultants and any other persons working for or on behalf of any of the foregoing any time from January 1, 2002 through the present.

c. “Choctaw Telecommunications, LLC” shall have the same meaning as attributed to it in the Plan of Reorganization, dated April 30, 2012, and filed with the United States Bankruptcy Court for the Northern District of Mississippi in Case No. 11-13463-DWH.

d. “Choctaw Holdings, LLC” shall have the same meaning as attributed to it in the Plan of Reorganization, dated April 30, 2012, and filed with the United States Bankruptcy Court for the Northern District of Mississippi in Case No. 11-13463-DWH.

e. The terms/phrases “referring to,” “relating to” and/or “concerning,” as used herein, shall be interpreted broadly and shall include, but not be limited to, the following meanings: constituting, comprising, evidencing, reflecting, respecting, discussing, referring to, stating, describing, recording, noting, considering, embodying, evaluating, analyzing, mentioning, containing, concerning, regarding, indicating, pertaining to, showing, bearing upon, studying, memorializing, or commenting upon, or any other term synonymous with or similar to the foregoing.

f. “State” and “describe” mean to set forth a complete and detailed statement of all information, circumstances and facts that refer to, relate to, reflect, comprise or bear upon the matter concerning which information is requested.

g. The terms “identify” and “identification” when used in reference to an individual person mean to state his full name, residence and business telephone numbers, and present residence and business addresses if known, and his present or last known title, position and business affiliation.

h. The term “identify” when used with reference to a person or persons, means to state his or her full name; last known business and residence addresses; and last known business and residence telephone numbers.

i. The terms “identify” and “identification” when used in reference to a person other than a natural person mean to state the full and official name of the business entity, its principal place of business, and the main telephone number of such business entity.

j. The terms “identify” and “identification” when used in reference to a document mean to state its date, type (e.g., memo, telecopy, email), and its authors, addressees, title, if any, and, if no title, a brief description of the subject matter of the document and its present or last known location and custodian. If any document once was, but is no longer, in your possession, custody, or control, state what disposition was made of it and the reason for such disposition.

k. The terms “identify” and “identification” when used in reference to any act, activity, practice, policy, effort, event, transaction, negotiation, discussion, conversation, occasion, occurrence, meeting, representation, agreement or communication, mean to: (a) describe the nature and substance of the act, activity, practice, policy, effort, event, transaction, negotiation, discussion, conversation, occasion, occurrence, meeting, representation, agreement or

communication; (b) state the date when and place where it occurred; and (c) identify each person who was a participant therein.

- l. The term “and” also means “or” and the term “or” also means “and.”
- m. The term “all” also means “any” and the term “any” also means “all.”
- n. The term “each” also means “every” and the term “every” also means “each.”
- o. The term “Document” means the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any taped, recorded, transcribed, written, typed, printed, filmed, videotaped, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made, including but not limited to any book, pamphlet, periodical, contract, agreement, correspondence, letter, facsimile, e-mail, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, photograph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minutes, marketing plan, research paper, preliminary drafts, or versions of all of the above, and computer material (print-outs, cards, magnetic or electronic tapes, disks and such codes or instructions as will transform such computer materials into easily understandable form) in the possession, custody, or control of Maritime.
- p. “Discussion” means any assembly, congregation, encounter, meeting or conversation between or among two or more individuals for any purpose, whether or not planned, arranged, or scheduled in advance. “Discussion” includes, without limitation, all oral communications, whether or not in person, by telephone (including voicemails and similar recordings), or otherwise, and electronic communications (including emails) between two or more individuals.

q. “Communication” means any discussion or any written or electronic correspondence or recorded voice message of any kind.

r. “Employee” means any director, trustee, officer, employee, partner, corporate parent, subsidiary, affiliate or servant of the designated entity, whether active or retired, full-time or part-time, current or former, and compensated or not.

s. “Representative” means any consultant, expert, attorney, contractor or other individual or entity engaged by the designated entity to perform some task or assignment for the entity.

t. “Entity” means any corporation, company, partnership, proprietorship, joint venture, or business, as well as any governmental unit.

u. “Person” means any natural person or legal entity, including but not limited to any corporation, partnership, proprietorship, firm, trust, association, government entity, organization, or group of persons.

v. “Site-Based Authorization” or “Site-Based Facilities” or “Site-Based Spectrum” shall mean each authorization identified in Attachment A to *Maritime Communications/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, EB Docket No. 11-71, FCC-11-64, rel. April 19, 2011 (“HDO”) except authorizations WQGF315, WQGF316, WQGF317, and WQGF318.

w. “Licensed Facility” or “Licensed Facilities” shall mean the site or sites specified by the Site-Based Authorization and shall be distinguished from, and shall not be interpreted the same as, a fill-in site or fill-in sites operating within the coverage parameters of the Site-Based Authorization.

x. “Exhibit A” shall mean the document entitled Exhibit A attached to and served contemporaneously with this set of interrogatories. Exhibit A identifies the Licensed Facilities

set forth in the Limited Joint Stipulation Between Enforcement Bureau and Maritime and Proposed Schedule, filed May 31, 2012.

y. "Exhibit B" shall mean the document entitled Exhibit B attached to and served contemporaneously with this set of interrogatories. Exhibit B identifies the Licensed Facilities set forth in the Limited Joint Stipulation Concerning Issue G Licenses, filed December 2, 2013.

z. "Exhibit C" shall mean the document entitled Exhibit C attached to, and served contemporaneously with, this set of interrogatories. Exhibit C identifies the 16 Licensed Facilities that were the subject of the Joint Motion of Enforcement Bureau and Maritime for Summary Decision on Issue G, filed on December 2, 2013.

#### **Instructions**

a. The singular of a term includes the plural number and vice versa, any use of gender includes both genders, and a verb tense includes all other verb tenses where the clear meaning is not distorted by addition of another tense or tenses.

b. With regard to each answer, identify the person(s) or document(s) relied upon by Choctaw in determining the substance of the answer.

c. Unless otherwise specified, supply all annual data requested on a calendar-year basis; if any basis other than a calendar-year basis is used, such as to accommodate a fiscal-year basis, state as part of the response the nature and type of the basis so used.

d. In the event you are unable to respond to any Interrogatory, please explain why you are unable to respond.

e. Unless otherwise specified, supply all information requested for the period January 1, 2002 through the present.

### **INTERROGATORIES**

1. Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit A, explain whether they are operating or being used to provide maritime and/or land mobile communications services, and if not, why not.

2. Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit A, explain whether Maritime has ever operated the Licensed Facilities or otherwise provided maritime and/or land mobile communications services from those Licensed Facilities, and if so, the time period(s) of any such operations.

3. Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit A, describe any steps Maritime has taken or is currently taking or is planning to take to operate or to resume operations at the Licensed Facilities.

4. Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit A, identify any prospective purchaser or current or prospective lessee and describe any steps they are taking or will be taking or any plans they have to operate or to resume operations at the Licensed Facilities.

5. Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit A, describe any steps Maritime is aware of that any other entity or individual, including but not limited to Choctaw, has taken or is currently taking or is planning to take to operate or to resume operations at the Licensed Facilities.

6. Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit A, describe any steps you have taken to ensure that operations are resumed at the Licensed Facilities.

7. Organizing your response by Licensed Facility, for each of the Licensed Facilities



set forth in Exhibit A, identify the person at Maritime who is most knowledgeable concerning the past, current and/or future operations of the Licensed Facilities, and provide a detailed description of that individual's knowledge and the basis for such knowledge.

8. Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit B, describe any steps Maritime has taken or is currently taking or is planning to take to resume operations at the Licensed Facilities.

9. Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit B, identify any prospective purchaser or current or prospective lessee and describe any steps they are taking or will be taking or any plans they have to operate or to resume operations at the Licensed Facilities.

10. Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit B, describe any steps Maritime is aware of that any other entity or individual, including but not limited to Choctaw, has taken or is currently taking or is planning to take to operate or to resume operations at the Licensed Facilities.

11. Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit B, describe any steps you have taken to ensure that operations are resumed at the Licensed Facilities.

12. Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit B, identify the person at Maritime who is most knowledgeable concerning the past, current and/or future operations of the Licensed Facilities, and provide a detailed description of that individual's knowledge and the basis for such knowledge.

13. Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit C, describe any steps Maritime has taken or is currently taking or is planning



to take to resume operations at the Licensed Facilities

14. Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit C, identify any prospective purchaser or current or prospective lessee and describe any steps they are taking or will be taking or any plans they have to operate or to resume operations at the Licensed Facilities.

15. Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit C, describe any steps Maritime is aware of that any other entity or individual, including but not limited to Choctaw, has taken or is currently taking or is planning to take to resume operations at the Licensed Facilities.


16. Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit C, describe any steps you have taken to ensure that operations are resumed at the Licensed Facilities.

17. Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit C, identify the person at Maritime who is most knowledgeable concerning the past, current and/or future operations of the Licensed Facilities, and provide a detailed description of that individual's knowledge and the basis for such knowledge.

18. Identify each individual who provided information that was used to respond to this set of interrogatories and for each such individual, the interrogatory or interrogatories to which his/her information was responsive.

Respectfully submitted,

Travis LeBlanc  
Acting Chief, Enforcement Bureau

  
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Pamela S. Kane  
Deputy Chief  
Investigations and Hearings Division  
Enforcement Bureau  
Federal Communications Commission  
445 12th Street SW, Room 4-C330  
Washington, D.C. 20554  
(202) 418-1420

July 21, 2014

**EXHIBIT A**

<b>Call Sign</b>	<b>Location</b>
KAE889	8
KAE889	14
KAE889	26
KAE889	27
KAE889	28
KAE889	33
KAE889	37
KAE889	39
KAE889	44
WHG693	Block A
WHG701	Block A
WHG702	Block A
WHG703	Block A
WHG705	Block A
WHG706	Block A
WHG707	Block A
WHG708	Block A
WHG709	Block A
WHG710	Block A
WHG711	Block A
WHG712	Block A
WHG713	Block A
WHG714	Block A
WHG715	Block A
WHG716	Block A
WHG717	Block A
WHG718	Block A
WHG719	Block A
WHG720	Block A
WHG721	Block A
WHG722	Block A
WHG723	Block A
WHG724	Block A
WHG725	Block A
WHG726	Block A
WHG727	Block A
WHG728	Block A
WHG729	Block A
WHG730	Block A
WHG731	Block A
WHG732	Block A

<b>Call Sign</b>	<b>Location</b>
WHG733	Block A
WHG734	Block A
WHG735	Block A
WHG736	Block A
WHG737	Block A
WHG738	Block A
WHG739	Block A
WHG740	Block A
WHG741	Block A
WHG742	Block A
WHG743	Block A
WHG744	Block A
WHG745	Block A
WHG746	Block A
WHG747	Block A
WHG748	Block A
WHG749	Block A
WHG750	Block A
WHG751	Block A
WHG752	Block A
WHG753	Block A
WHG754	Block A
WRV374	2
WRV374	3
WRV374	17
WRV374	24
WRV374	27
WRV374	28
WRV374	29
WRV374	36

**EXHIBIT B**

<b>Call Sign</b>	<b>Location</b>
KAE889	6
KAE889	12
KAE889	22
KAE889	46
WHG693	Block B
WHG701	Block B
WHG702	Block B
WHG703	Block B
WHG705	Block B
WHG706	Block B
WHG707	Block B
WHG708	Block B
WHG709	Block B
WHG710	Block B
WHG711	Block B
WHG712	Block B
WHG713	Block B
WHG714	Block B
WHG715	Block B
WHG716	Block B
WHG717	Block B
WHG718	Block B
WHG719	Block B
WHG720	Block B
WHG721	Block B
WHG722	Block B
WHG723	Block B
WHG724	Block B
WHG725	Block B
WHG726	Block B
WHG727	Block B
WHG728	Block B
WHG729	Block B
WHG730	Block B
WHG731	Block B
WHG732	Block B
WHG733	Block B
WHG734	Block B
WHG735	Block B
WHG736	Block B
WHG737	Block B

<b>Call Sign</b>	<b>Location</b>
WHG738	Block B
WHG739	Block B
WHG740	Block B
WHG741	Block B
WHG742	Block B
WHG743	Block B
WHG744	Block B
WHG745	Block B
WHG746	Block B
WHG747	Block B
WHG748	Block B
WHG749	Block B
WHG751	Block B
WHG752	Block B
WHG753	Block B
WHG754	Block B
WHV733	1
WHV733	2
WHV733	3
WHV740	2
WHV843	1
WHV843	5
WRV374	2
WRV374	3
WHV843	6
WRV374	8
WRV374	12
WRV374	19
WRV374	20
WRV374	22
WRV374	23
WRV374	26
WRV374	34
WRV374	39

**EXHIBIT C**

<b>Call Sign</b>	<b>Location</b>
KAE889	3
KAE889	4
KAE889	13
KAE889	20
KAE889	30
KAE889	34
KAE889	48
WHG750	
WRV374	14
WRV374	15
WRV374	16
WRV374	18
WRV374	25
WRV374	33
WRV374	35
WRV374	40

**CERTIFICATE OF SERVICE**

Makia Day, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 21st day of July, 2014, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S INTERROGATORIES TO MARITIME COMMUNICATIONS/LAND MOBILE, LLC PURSUANT TO *ORDER*, FCC 14M-22" TO:

The Honorable Richard L. Sippel  
Chief Administrative Law Judge  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554 (by hand, courtesy copy)

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Makia Day

**ENCLOSURE 2**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
<b>MARITIME COMMUNICATIONS/LAND</b>	)	EB Docket No. 11-71
<b>MOBILE, LLC</b>	)	File No. EB-09-IH-1751
	)	FRN: 0013587779
Participant in Auction No. 61 and Licensee of Various	)	
Authorizations in the Wireless Radio Services	)	
Applicant for Modification of Various Authorizations	)	
in the Wireless Radio Services;	)	
	)	
Applicant with ENCANA OIL AND GAS (USA), INC.;	)	Application File Nos.
DUQUESNE LIGHT COMPANY; DCP	)	0004030479, 0004144435,
MIDSTREAM, LP; JACKSON COUNTY RURAL	)	0004193028, 0004193328,
MEMBERSHIP ELECTRIC COOPERATIVE; PUGET	)	0004354053, 0004309872,
SOUND ENERGY, INC.; ENBRIDGE ENERGY	)	0004310060, 0004314903,
COMPANY, INC.; INTERSTATE POWER AND	)	0004315013, 0004430505,
LIGHT COMPANY; WISCONSIN POWER AND	)	0004417199, 0004419431,
LIGHT COMPANY; DIXIE ELECTRIC	)	0004422320, 0004422329,
MEMBERSHIP CORPORATION, INC.; ATLAS	)	0004507921, 0004153701,
PIPELINE—MID CONTINENT, LLC; DENTON	)	0004526264, 0004636537,
COUNTY ELECTRIC COOPERATIVE, INC., DBA	)	and 0004604962
COSERV ELECTRIC; AND SOUTHERN	)	
CALIFORNIA REGIONAL RAIL AUTHORITY	)	
	)	
For Commission Consent to the Assignment of Various	)	
Authorizations in the Wireless Radio Services	)	

**RESPONSE TO INTERROGATORIES**

Maritime Communications/Land Mobile, LLC (“Maritime”) hereby respectfully tenders these responses to the *Enforcement Interrogatories to Maritime Communications/Land Mobile, LLC Pursuant to Order, FCC 14M-22*, served on July 21, 2014.

**A. GENERAL OBJECTIONS**

Maritime objects to the interrogatories as redundant, repetitive, and unduly burdensome to the extent they seek information that has already been provided in response to prior discovery requests, in depositions, or otherwise.

Maritime further objects to the interrogatories insofar as they seek information protected from disclosure by a legally recognized privilege or immunity. The inadvertent disclosure of any such protected information shall not constitute a waiver of the applicable privilege or immunity.

Maritime objects to the interrogatories to the extent they seek or suggest a legal conclusion regarding what constitutes “operation” or “service” for purposes of Section 1.955(a) of the FCC Rules, Maritime responds as follows. The factual responses set forth herein do not constitute a concession or waiver of any legal position.

Each of these objections applies fully to each and every interrogatory whether or not repeated or specifically stated in the answer.

Without waiving and subject to these objections, Maritime provides the following answers in good faith and in the interest of expediting and simplifying these proceedings.

#### **B. CLARIFICATION REGARDING EXHIBITS**

In reviewing these interrogatories, Maritime discovered what appeared to be some discrepancies or errors in the facilities listed in the exhibits. Maritime discussed this matter informally with counsel for the Enforcement Bureau. Accordingly, the following interrogatory answers assume the following adjustments to the exhibits:

- Station KAE889 – Location 40 is added to Exhibit A.
- Station WRV374 – Location 31 is added to Exhibit A.
- Station WRV374 – Locations 2 & 3 are deleted from Exhibit B.

### C. ANSWERS TO INTERROGATORIES

1. *Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit A, explain whether they are operating or being used to provide maritime and/or land mobile communications services, and if not, why not.*

ANSWER: None of the facilities listed in Exhibit A is currently being used to provide maritime and/or land mobile communications services. Except as otherwise stated in prior discovery responses or elsewhere in these interrogatory responses, Maritime had ceased providing AMTS service directly to end users via these facilities by December 31, 2007, although many of the facilities were thereafter maintained in operational status for as long as Maritime was able to pay site leases, utilities, and related expenses. Shortly before May 31, 2012, after consultation with, inter alia, bankruptcy counsel, the secured creditors, and the unsecured creditor's committee, Maritime decided to permanently abandon these facilities.

These incumbent (site-based) AMTS licenses are subsumed within geographic (auctioned) AMTS licenses, i.e., all of the spectrum and geographic area authorized under these licenses is separately licensed to Maritime as follows:

- Maritime's Block A license for Station WQGF315 (Geographic Market Area AMT002 - Mid-Atlantic) subsumes the authority licensed by incumbent station WRV374, Location Nos. 2-3, 17, 24, 27- 29, 31 & 36.
- Maritime's Block A license for Station WQGF316 (AMTS Geographic Market Area AMT004 - Mississippi River) subsumes the Block A portion of the authority licensed by incumbent stations WHG693, WHG701-WHG703, WHG705-WHG735 & WHG738-WHG754.
- Maritime's Block A license for Station WQGF317 (AMTS Geographic Market Area AMT005 - Great Lakes) subsumes the Block A portion of the authority licensed by incumbent stations WHG736 & WHG737.
- Maritime's Block A license for Station WQGF318 (AMTS Geographic Market Area AMT006 - Southern Pacific) subsumes the authority licensed by incumbent station KAE889, Location Nos. 8, 14, 26-28, 33, 37, 39-40 & 44.

Maritime therefore determined that abandoning these licenses would reduce the cost of litigating Issue G, thereby maximizing recovery by creditors, with no net reduction in Maritime's AMTS license authority in terms of spectrum or geographic coverage.

2. *Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit A, explain whether Maritime has ever operated the Licensed Facilities or otherwise provided maritime and/or land mobile communications services from those Licensed Facilities, and if so, the time period(s) of any such operations.*

ANSWER: As to all of the facilities discussed below, except as otherwise stated, Maritime ceased providing service to end user customers after December 31, 2007, although most of the facilities were thereafter maintained in operational status. The license authority for these stations is entirely subsumed by Maritime's geographic licenses, as discussed in the answer to Interrogatory No. 1, above. Maritime has made no effort to maintain any of these facilities in operational status since deciding to voluntarily cancel them shortly before May 31, 2012.

- Stations WHG693, WHG701-WHG703 & WHG754 were operated as part of the "Watercom" system. This system ceased providing service to end user customers as of December 31, 2007. As reported in prior discovery responses, however, Stations WHG707 and WHG754 had become nonoperational by the time the licenses were acquired by Maritime. The remainder of the Watercom stations remained operational until the dates reported in prior discovery responses. See Errata and Additional Information Regarding Amended and Further Supplemental Response to Interrogatories (served March 19, 2012) at Table 3, as updated by Supplemental Responses per Order FCC 12M-38 (served August 9, 2012).
- Locations 8, 14, 26-28, 33, 37, 39 & 44 of Station KAE889 were operated in MPT1327 format as part of the "West Coast" regional system. Except for Location 14 of Station KAE889, the West Coast system had ceased providing service to end user

customers as of December 31, 2012. Maritime continued to provide service via Location 14 of Station KAE889 until 2010 when the station was deactivated to avoid interference to operations of Southern California Regional Rail Authority, a lessee of spectrum under Maritime's subsuming geographic license.

- Locations 2, 3 & 31 of Station WRV374 were operated initially in LTR format and later operated as part of the "PassPort" systems until 2007.
  - Location Nos. 17, 24, 27-29 & 36 were operated in LTR format, with plans to convert them to "PassPort" had that project been continued.
3. *Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit A, describe any steps Maritime has taken or is currently taking or is planning to take to operate or to resume operations at the Licensed Facilities.*

ANSWER: See answer to Interrogatory No. 1, above.

4. *Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit A, identify any prospective purchaser or current or prospective lessee and describe any steps they are taking or will be taking or any plans they have to operate or to resume operations at the Licensed Facilities.*

ANSWER: See answer to Interrogatory No. 1, above.

5. *Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit A, describe any steps Maritime is aware of that any other entity or individual, including but not limited to Choctaw, has taken or is currently taking or is planning to take to operate or to resume operations at the Licensed Facilities.*

ANSWER: See answer to Interrogatory No. 1, above.

6. *Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit A, describe any steps you have taken to ensure that operations are resumed at the Licensed Facilities.*

ANSWER: See answer to Interrogatory No. 1, above.

7. *Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit A, identify the person at Maritime who is most knowledgeable concerning the past, current and/or future operations of the Licensed Facilities, and provide a detailed description of that individual's knowledge and the basis for such knowledge.*

ANSWER: See Response to Interrogatories at ¶ 8 (served February 6, 2012);

Supplemental Response to Interrogatories at ¶ 18 (served February 8, 2012); Further

Supplemental Response to Interrogatories at ¶ 18 (served February 28, 2012); Amended and

Further Supplemental Response to Interrogatories at ¶ 18 (served March 16, 2012); and

Response to Interrogatories at ¶¶ 1 & 4-8 (served August 30, 2012).

8. *Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit B, describe any steps Maritime has taken or is currently taking or is planning to take to resume operations at the Licensed Facilities.*

ANSWER: Maritime has no plans to resume operations at the facilities listed in

Exhibit B. Except as otherwise stated in prior discovery responses or elsewhere in these interrogatory responses, Maritime had ceased providing AMTS service directly to end users via these facilities by December 31, 2007. Maritime's intention, however, was to resume commercial operation of these facilities and/or lease the spectrum when demand for service and its financial condition permitted. Accordingly, most of these facilities were thereafter maintained in operational status for as long as Maritime was able to pay site leases, utilities, and related expenses.

Shortly before December 2, 2013, after consultation with, inter alia, bankruptcy counsel, Choctaw, and the liquidating agent appointed by the bankruptcy court to represent the interests of the unsecured creditors, Maritime decided to permanently abandon these facilities. In arriving at this conclusion, Maritime balanced the potential value that might ultimately be derived from these incumbent stations against the indefinite additional time and substantial expense required to continue litigation, including appeals, of Issue G. Further litigation costs would significantly



reduce the amount of funds available for recovery by creditors, and further delays in final resolution threaten the possibility of any recovery at all. It was therefore determined that the best interest of creditors would be served by abandoning the facilities listed in Exhibit B in an effort to expedite resolution of the pending request for Second Thursday relief as well as Issue G as to the remaining incumbent licenses (i.e, those listed in Exhibit C).\*

9. *Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit B, identify any prospective purchaser or current or prospective lessee and describe any steps they are taking or will be taking or any plans they have to operate or to resume operations at the Licensed Facilities.*

ANSWER: See answer to Interrogatory No. 8, above.

10. *Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit B, describe any steps Maritime is aware of that any other entity or individual, including but not limited to Choctaw, has taken or is currently taking or is planning to take to operate or to resume operations at the Licensed Facilities.*

ANSWER: See answer to Interrogatory No. 8, above.

11. *Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit B, describe any steps you have taken to ensure that operations are resumed at the Licensed Facilities.*

ANSWER: See answer to Interrogatory No. 8, above.

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\* This action was in compliance with applicable bankruptcy law and the terms of the plan of reorganization in the Maritime bankruptcy proceeding, which expressly contemplated the loss of all the incumbent stations due to Issue G, as well as any "settlement reached in the administrative proceeding." *Order Confirming Plan of Reorganization*, Case No. 11-13463 (Bankr. N.D. Miss., Jan. 11, 2013) at ("Confirmation Order") at 7. See also *Maritime's Response to Havens-Skytel Motions per Order FCC 13M-9* (filed in this proceeding December 16, 2013) at ¶ 7 & Attachment No. 4 thereto, the *Declaration of Craig M. Geno*, Maritimes bankruptcy counsel; *Choctaw's Response to Havens-SkyTel First Motion Under Order 13M-19* (filed in this proceeding December 16, 2013), including Attachment A thereto, the memorandum of Bill D. Bensinger, Choctaw's bankruptcy counsel; and the December 18, 2013 supporting Declaration of Jesse K. Slayton, Liquidating Agent (filed in this proceeding December 19, 2013, pursuant to Choctaw's motion for leave.

12. *Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit B, identify the person at Maritime who is most knowledgeable concerning the past, current and/or future operations of the Licensed Facilities, and provide a detailed description of that individual's knowledge and the basis for such knowledge.*

ANSWER: See answer to Interrogatory No. 7, above.

13. *Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit C, describe any steps Maritime has taken or is currently taking or is planning to take to resume operations at the Licensed Facilities.*

ANSWER: Without conceding that these sites are not in operation or service for purposes of Section 1.955(a) of the FCC Rules, Maritime responds as follows. Maritime intends to assign these authorizations and any associated asset purchase and spectrum lease agreements (see answer to Interrogatory No. 14, below) to Choctaw, subject to all required prior Commission consents and approvals, in accordance with the plan of reorganization in the bankruptcy case. It is Maritime's understanding that Choctaw will take all steps required by Commission rule or order to maintain and operate these facilities.

14. *Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit C, identify any prospective purchaser or current or prospective lessee and describe any steps they are taking or will be taking or any plans they have to operate or to resume operations at the Licensed Facilities.*

ANSWER: See answer to Interrogatory No. 13, above. In addition, as reported in previous discovery responses, depositions, and it otherwise already on the record in this proceeding, most of the stations listed in Exhibit C are subject to purchase agreements, subject to spectrum leases, and/or impacted by spectrum leases, as follows:

- Locations 3 & 13 of Station KAE889 are subject to a spectrum lease with Evergreen School District.
- Locations 4, 20, 30, 34 & 48 are subject to an asset purchase agreement and spectrum lease with Puget Sound Energy.

- A 500 kHz segment of the Block B portion of Station WHG750 is subject to an asset purchase agreement and spectrum lease with Duquesne Power & Light.
- Locations 14-16, 18, 25, & 33 of Station WRV374 are subject to and/or impacted by a spectrum lease arrangement with Pinnacle Wireless.

15. *Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit C, describe any steps Maritime is aware of that any other entity or individual, including but not limited to Choctaw, has taken or is currently taking or is planning to take [steps] to resume operations at the Licensed Facilities.*

ANSWER: Without conceding that these sites are not in operation or service for purposes of Section 1.955(a) of the FCC Rules, Maritime responds as follows.

As consistently stated in prior discovery responses, Maritime has never intended to permanently terminate operation of any of the facilities listed in Exhibit C.

As to the leased facilities (i.e., those identified in the answer to Interrogatory No. 14, above), Maritime has temporarily suspended regular commercial operation in order to avoid interference with the spectrum lessees. Maritime nevertheless maintains operational facilities for the following licensed locations: Station WHG750, Locations 4, 20, 30, 34 & 48 of Station KAE889 and Locations 14 & 18 of Station WRV374. As to all of the leased facilities, the lessees operate multiple facilities within the service area and in the spectrum band of the authorized stations.

Maritime does not currently have operational facilities at the following license locations: Location 3 & 13 of Station KAE889 and Locations 15-16, 25 & 33 of Station WRV374. In the case of these sites, Maritime has been unable to maintain site leases and/or utilities due it is financial insolvency. As previously explained, however, spectrum lessees are currently operating multiple facilities pursuant to these licenses, and Maritime has never intended to permanently discontinue operation of or abandon these authorizations.

Maritime maintains currently operating facilities at the licensed Locations 35 and 40 of Station WRV374 but does not currently have any end user customers.

See also answer to Interrogatory Nos. 13 & 14, above.

16. *Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit C, describe any steps you have taken to ensure that operations are resumed at the Licensed Facilities.*

ANSWER: See answer to Interrogatory No. 13, above.

In addition, as explained in prior discovery responses and discussed in detail in the depositions of former Maritime employees John S. Reardon (September 28, 2012) and Robert T. Smith (October 11, 2012), the demand for traditional maritime and land mobile services using AMTS spectrum had largely evaporated by late 2007. Leading up to that time and continually and consistently thereafter, Maritime expended considerable effort and resources in an attempt to develop and market products and services utilizing the authorized spectrum for all of its incumbent stations, including but not limited to those listed in Exhibit C. The implementation of PassPort was an attempt to expand use of the AMTS for non-maritime land mobile communications services, and would have been deployed at other incumbent station locations had it proved successful. Maritime explored numerous options, including but not limited to, positive train control, smart grid, public safety and critical infrastructure applications, container tracking, electronic billboard services, AIS-B Coast Guard-related communications, etc., as well as support for new IP-based services being developed by Critical RF, an affiliated company.

17. *Organizing your response by Licensed Facility, for each of the Licensed Facilities set forth in Exhibit C, identify the person at Maritime who is most knowledgeable concerning the past, current and/or future operations of the Licensed Facilities, and provide a detailed description of that individual's knowledge and the basis for such knowledge.*

ANSWER: See answer to Interrogatory No. 7, above.

18. *Identify each individual who provided information that was used to respond to this set of interrogatories and for each such individual, the interrogatory or interrogatories to which his/her information was responsive.*

ANSWER: Except for matters of which official notice may be taken: Sandra M. DePriest provided information regarding Maritime's intentions and plans regarding the incumbent stations, and Messrs. John S. Reardon and Robert T. Smith, former Maritime employees, provided information regarding the operation of Maritime's incumbent stations.

Respectfully Submitted,



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Dated: August 4, 2012

**VERIFICATION**

I, Sandra M. DePriest, state that I have reviewed the foregoing answers of Maritime Communications/Land Mobile, LLC ("Maritime") to interrogatories propounded by the Enforcement Bureau. Insofar as the responses relate to Maritime's plans and intentions regarding the incumbent stations, the responses reflect my personal knowledge as President of Maritime. Insofar as the responses relate to operation of the incumbent stations, I have relied on information provided by John S. Reardon and Robert T. Smith, former employees of Maritime.

I certify under penalty of perjury that this verification is true and accurate to the best of my knowledge, information, and belief, and is offered in good faith.

A handwritten signature in black ink, appearing to read 'Sandra M. DePriest', written over a horizontal line.

Sandra M. DePriest

Dated: August 4, 2014

### CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of August, 2012, I caused copies of the foregoing document to be served, by U.S. Postal Service, First Class postage prepaid, on the following:

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